

UNITED STATES BANKRUPTCY COURT
for the Eastern District of Pennsylvania

In re	:	Case No. 16 - 12331
Maria E. Oliveras	:	(Chapter 13)
Debtor.	:	
	:	Hon. Jean K. FitzSimon
	:	

Memorandum of Law
in Support of Objection to P.O.C. # 9

Debtor, Maria E. Oliveras, by and through her attorney, Ronald G. McNeil, Esquire, hereby submits this memorandum of law in support of her objection to this proof of claim. Debtor believes that she has a delinquency with her mortgage company. However, she believes that this claim is excessive in light that this mortgage foreclosure complaint was unchallenged and this Creditor obtained a default judgment against her shortly before she filed this bankruptcy.

State judicial proceedings must be given “the same full faith and credit” in the federal courts as they would receive in the courts of the rendering state. 28 U.S.C. 1738; Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326-27 (1979). Res judicata bars relitigation of issues which have been actually and necessarily determined in a prior proceeding, whether or not the same claim or cause of action is involved. In re Knapper, 407 F.3d 573, 583 (3d Cir. 2005).

In this case, the default judgment had been entered on January 13, 2016. Neither party filed an appeal. Therefore, a final state court judgment has been entered. Section 13 states that: “[t]he rules of res judicata are applicable only when a final judgment is rendered . . .” Restatement (Second) of Judgments § 28 (review is unavailable as a matter of law where the controversy has become moot, or because the law does not allow review of the particular category of judgments); Greenleaf v. Garlock, Inc., 174 F.3d 352, 360 (3d Cir. 1999).

This creditor cannot use the filing of a proof of claim as a means of relitigating the mortgage foreclosure complaint. On January 13, 2016, it obtained an unopposed default judgment for \$94,865.13. It cannot utilize this proof of claim to enlarge this judgment for activities that allegedly occurred prior to this judgment. Pre-petition arrears are limited to such costs, fees, and charges which occurred between January 13, 2016 and Debtor’s date of bankruptcy filing, April 3, 2016. After three months of missed payments of \$657.19 monthly, a refundable \$2,000.00 Philadelphia Sheriff deposit, and inadequate discovery requests, this Creditor should bear the burden of justifying an additional delinquency of \$8,433.91. Rule 3001(c) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

/s/ Ronald G. McNeil
Ronald G. McNeil, Esquire
Attorney for Debtor
DATE: May 24, 2017
1333 Race Street
Philadelphia, PA 19107-1585
(215) 564 - 3999 (t)
(215) 564 - 3537 (fx)
r.mcneil1@verizon.net

In the Court of Common Pleas of Philadelphia County

U.S BANK NATIONAL ASSOCIATION (TRUSTEE FOR THE
PENNSYLVANIA HOUSING FINANCE AGENCY)
211 North Front Street
P.O. Box 15057
Harrisburg, PA 17101

Plaintiff

vs.

TOMASA DIAZ-RUIZ
MARIA E. OLIVERAS
(Mortgagor(s) and Record Owner(s))
3826 Lawndale Street
Philadelphia, PA 19124

Defendant(s)



No. 150602311

PRAECIPE FOR JUDGMENT

THIS LAW FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTING TO COLLECT A DEBT OWED TO OUR CLIENT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

Enter the Judgment in favor of Plaintiff and against TOMASA DIAZ-RUIZ and MARIA E. OLIVERAS by default for want of an Answer.

I CERTIFY THAT FOREGOING ASSESSMENT OF DAMAGES IS FOR SPECIFIED AMOUNTS ALLEGED TO BE DUE IN THE COMPLAINT AND IS CALCULABLE AS A SUM CERTAIN FROM THE COMPLAINT.

(Copy of Assessment of Damages Attached)

I certify that written notice of the intention to file this praecipe was mailed or delivered to the party against whom judgment is to be entered and to his attorney of record, if any, after the default occurred and at least ten days prior to the date of the filing of this praecipe. A copy of the notice is attached. R.C.P. 237.1

By: _____

KML LAW GROUP, P.C.

Michael McKeever Pa. ID 56129

Lisa Lee Pa. ID 78020

Kristina Murtha Pa. ID 61858

David Fein Pa. ID 82628

Thomas Puleo Pa. ID 27615

Jill P. Jenkins Pa. ID 306588

Andrew F. Gornall Pa. ID 92382

Alyk L. Oflazian Pa. ID 312912

Crystal Español Pa. ID 315477

Cristina Lynn Connor Pa. ID 318389

Victoria W. Chen Pa. ID 317741

Matthew K. Fissel Pa. ID 314567

Attorneys for Plaintiff

AND NOW _____, Judgment is entered in favor of U.S BANK NATIONAL ASSOCIATION (TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY) and against TOMASA DIAZ-RUIZ and MARIA E. OLIVERAS by default for want of an Answer and damages assessed in the sum of \$94,865.13 as per the above certification.

Prothonotary

Case ID: 150602311

ASSESSMENT OF DAMAGES

TO THE PROTHONOTARY:

Kindly assess the damages in this case to be as follows:

Principal Balance	\$86,079.01
Interest from 05/01/2014 through 01/11/2016	\$4,825.17
Late Charges	\$322.00
Escrow Payments Due 8 X \$224.46	\$1,795.68
Escrow Advance	\$1,996.37
Deferred Late Charges	\$313.90
Suspense	(\$467.00)
	<hr/>
	\$94,865.13

By: 

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Matthew K. Fissel Pa. ID 314567

Attorneys for Plaintiff

AND NOW, this day of , 2016 damages are assessed as above.

Pro Prothy

150602311/145883FC

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UNITED STATES BANKRUPTCY COURT
for the Eastern District of Pennsylvania

In re	:	Case No. 16 - 12331
Maria E. Oliveras	:	(Chapter 13)
Debtor.	:	
	:	Hon. Jean K. FitzSimon
	:	

CERTIFICATE OF SERVICE

I, Ronald G. McNeil, Esquire, certify that a true and correct copy of Debtor's Memorandum of Law in Support of her Objection to Creditor's, Pennsylvania Housing Finance Agency, Proof of Claim (Claim No. 9) was served via electronic means upon the following:

U.S. Bank, N.A., a/k/a, PHFA
Loan Servicing Division
c/o KML Law Group, P.C.
ATTN: Thomas J. Puleo, Esquire
Mellon Independence Center
701 Market Street, Suite 5000
Philadelphia, PA 19106-1532

William C. Miller, Esquire
Office of the Chapter 13 Standing Trustee
P.O. Box 1299
Philadelphia, PA 19105

Office of the U.S. Trustee
833 Chestnut Street, Suite 500
Philadelphia, PA 19107-4414

/s/ Ronald G. McNeil
Ronald G. McNeil, Esquire
Attorney for Debtor
DATE: May 24, 2017